UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GEORGE GUINDON, et al.,	)	
	)	
Plaintiffs,	)	
	)	**C.A. NO. 03-335-L**
VS.	)	
	)	
AMERICAN FOAM CORPORATION et al.,	)	
	)	
Defendants.	)	

DEFENDANT FOAMEX INTERNATIONAL, INC.'S OPPOSITION TO PLAINTIFFS' REQUEST TO FILE A SUR-REPLY BRIEF ON THE RULE 12(b)(6) MOTION TO DISMISS

Defendant Foamex International, Inc. ("Foamex") opposes Plaintiffs' Motion Requesting Permission to File a Sur-Reply Brief to Foamex's Reply Memorandum on its Rule 12(b)(6) Motion to Dismiss. Foamex submits its memorandum in support of this motion.

Respectfully submitted,

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GUINDON CERTIFICATION

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FOR THE DISTRICT OF RHODE ISLAND

GEORGE GUINDON, et al.,	)	
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Plaintiffs,	)	
	)	**C.A. NO. 03-335-L**
VS.	)	
	)	
AMERICAN FOAM CORPORATION et al.,	)	
	)	
Defendants.	)	

DEFENDANT FOAMEX INTERNATIONAL, INC.'S MEMORANDUM IN SUPPORT OF OPPOSITION TO PLAINTIFFS' REQUEST TO FILE A SUR-REPLY BRIEF ON THE RULE 12(b)(6) MOTION TO DISMISS

Defendant Foamex International, Inc. ("Foamex") opposes Plaintiffs' Motion Requesting Permission to File a Sur-Reply Brief to Foamex's Reply Memorandum on its Rule 12(b)(6) Motion to Dismiss.

Neither the rules nor orders of this Court permit the filing of a sur-reply. Moreover, Plaintiffs incorrectly assert that Foamex "raised additional issues in their reply brief." To the contrary, Foamex's reply memorandum was limited to responding to the arguments made by Plaintiffs' in their opposition brief and Foamex did not raise additional issues. As evidenced by Plaintiffs' failure to identify even one such "additional issue" in support of its request of this Court, there is no basis for permitting Plaintiffs another opportunity to rehash arguments they made earlier or to raise issues that could and should have been presented in their original opposition to Foamex's motion. *See, e.g., General Elec. Co. v. Latin American Imports, S.A.*, 187 F. Supp. 2d 749 (W.D. Ky. 2001) (motion for leave to file sur-reply not to be used for recently discovered caselaw or arguments which the parties did not think to make in their pleadings).

For these reasons, Foamex requests that Plaintiff's Motion Requesting Permission to File a Sur-Reply Brief be denied.

Respectfully submitted,

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